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No. 96. 19

Sup. Ct. of M Kenney for Appt.

Office Supreme Court U. S.
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Filed Jan. 10, 1900.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 96.

WILLIAM WHEELER HUBBELL, APPELLANT,

vs.

THE UNITED STATES.

SUPPLEMENTAL BRIEF FOR APPELLANT.

If it is established that the device known as the Government reloading cartridge is within the terms of the letters patent issued to appellant, the contractual obligation of the United States to pay a reasonable royalty for the use of the patented device is fixed. The patent to Hubbell was issued February 18, 1879. March 22, 1879, the patentee informed the Secretary of War of its issue, urged the adoption of the device therein described, and asked that he be allowed a reasonable royalty on all cartridges embracing the patented combination thereafter manufactured by the United States.

The manufacture of cartridges embracing the patented combination was commenced by defendant in July, 1879, and has since continued.

"This is not a claim for an infringement, but a claim of compensation for an authorized use, two things totally distinct in law." * * * The claimant invited the Government to adopt his patented combination, and the Government did so. No tort was committed or is claimed to have been committed. The Government used the claimant's improvements with his consent, and, certainly, with the expectation on his part of receiving a reasonable compensation for the license.

The Court of Claims has jurisdiction to entertain claims and demands of this character, and to render a money judgment in favor of the claimant.

United States *vs.* Palmer, 128 U. S., 262.
United States *vs.* Berdan Firearms Mfg. Co., 156 U. S., 552.

The principle declared in the Palmer case was reiterated and emphasized in Schillinger *vs.* United States (155 U. S., 162), and the two cases carefully distinguished.

The right of recovery in cases like that at bar has been repeatedly affirmed by the Court of Claims.

Hubbell *vs.* United States, 20 C. Cl., 354.
McKeever *vs.* United States, 14 C. Cl., 396 (affirmed by Sup. Ct. U. S., Nov. 20, 1882, without opinion).
Forehand *vs.* United States, 23 C. Cl., 477.

"The policy of the War Department of late years towards inventors has been one of neutrality, neither denying nor admitting legal rights, but taking inventions to perfect Government arms, leaving inventors free to seek redress without prejudice before other tribunals than an executive department.

"Where an inventor is in constant communication with

the ordnance officers, exhibiting his inventions and urging their adoption, and they, without accepting or rejecting his propositions, use the device covered by his patent, a contract will be implied, and an action thereon will be within the jurisdiction of this court."

Berdan *vs.* U. S., 26 C. Cl., 48.
Pasqueau *vs.* U. S., 26 C. Cl., 509.

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